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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRY TARALLO,

Defendant and Appellant.

2d Crim. No. B265739  
(Super. Ct. No. 2010045141)  
(Ventura County)

Terry Tarallo appeals from judgment after an order revoking his postrelease community supervision (PRCS). (Pen. Code, § 3450 et seq.)<sup>1</sup> He contends the revocation procedures employed by Ventura County violated his right to due process because he did not have a *Morrissey*-compliant<sup>2</sup> probable cause hearing before the court within 15 days of arrest. He seeks an order reversing the trial court's denial of his motion to dismiss. We affirm.

FACTUAL BACKGROUND

In 2011, Tarallo was convicted after plea of guilty to traumatic injury to child (§ 273d, subd. (a)), corporal injury to spouse (§ 273.5), and assault with a deadly

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*).

weapon (§ 245, subd. (a)(1)). The trial court granted formal probation. After he admitted violating probation, he was sentenced to prison in 2014.

Tarallo was released in 2014 on PRCS following realignment. The Ventura County Probation Agency is his supervising agency. As a condition of release, he agreed to obey all laws, not consume alcohol, and maintain a residence with a street address as approved by probation. He also agreed the probation agency could, without a court hearing, order “flash incarceration” in a county jail for up to 10 days if he violated the conditions of his release. (§ 3453, subd. (q).)

In April 2015,<sup>3</sup> Tarallo moved out of his residence without informing probation. In May, he was arrested for driving under the influence of alcohol.

Tarallo was taken into custody on May 1. On May 4, Senior Deputy Probation Officer Venessa Meza met with Tarallo. Meza advised Tarallo of his rights, including his right to counsel and a revocation hearing, and conducted an administrative probable cause hearing. Meza concluded there was probable cause to believe that Tarallo violated the terms of PRCS. Tarallo refused to waive his rights and requested a formal hearing.

On May 8, the probation agency filed a revocation petition. The hearing was set for May 28.

On the date of the hearing, Tarallo moved (through counsel) to dismiss the petition for revocation and for release based upon an alleged violation of due process. He argued he was entitled to arraignment before a court within 10 days of arrest and a probable cause hearing before a court within 15 days of arrest.

The trial court denied Tarallo’s motion to dismiss and heard the revocation petition. Tarallo admitted the violations of PRCS. The trial court found him in violation of PRCS and ordered him to serve a jail sentence.

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<sup>3</sup> All future dates are in the year 2015.

## DISCUSSION

### *Due Process Requirements*

Revocation of supervised release deprives a person of a conditional liberty interest, and may only be had with due process protections. (*Morrissey, supra*, 408 U.S. at p. 482 [parole revocation]; *People v. Vickers* (1972) 8 Cal.3d 451, 458 (*Vickers*) [probation revocation].)

To conform to due process, revocation of conditional release requires a two-step process: (1) an initial determination of probable cause to justify temporary detention; and (2) a formal revocation hearing to determine whether the facts warrant revocation. (*Morrissey, supra*, 408 U.S. at p. 485; *Vickers, supra*, 8 Cal.3d at p. 456.) It is undisputed that the formal revocation hearing complied with *Morrissey* and *Vickers* in this case.

### *The Probable Cause Hearing*

The probable cause determination is a “minimal inquiry,” made near the place of arrest “as promptly as convenient after arrest.” (*Morrissey, supra*, 408 U.S. at p. 485.) It need not be made by a judicial officer; it may be made by any qualified person “not directly involved in the case.” (*Id.* at pp. 485-486 [probable cause determination for parole revocation may be made by a parole officer other than the officer who reports the violation or recommends revocation]; *Vickers, supra*, 8 Cal.3d at pp. 456-457.) To conform to due process, the probable cause determination must be preceded by notice of the hearing and the alleged violations, and must provide an opportunity for the supervised person to speak on his own behalf, present evidence, and question adverse witnesses. (*Morrissey*, at pp. 485-486; *Vickers*, at pp. 456-457.) The officer who determines probable cause must summarize what occurs at the hearing, but need not make formal findings of fact and law. (*Morrissey*, at p. 487; *Vickers*, at p. 457.)

Tarallo complains that the probable cause hearing conducted by Meza was “nothing more than a pro forma, ex-parte interview” and was no more than “an illusion” which was “in effect, an early disposition conference rather than a fact-finding hearing.”

We upheld the same revocation procedure challenged in this case in *People v. Byron* (2016) 246 Cal.App.4th 1009. We follow our own precedent.

*Tarallo Has Failed to Demonstrate Prejudice*

Tarallo argues that his due process rights were violated at the probable cause phase, prior to the formal revocation hearing. But the underlying problem with his appeal is this: No matter what due process violation is claimed, he makes no showing of prejudice at the formal revocation hearing. He admitted the violations at the revocation hearing and has now served his sentence.

The denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless the violation results in prejudice at the revocation hearing. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) But Tarallo makes no showing that any due process defect prejudiced him or affected the outcome of the PRCS revocation hearing. (*In re Winn* (1975) 13 Cal.3d 694, 698 [defendant has burden of showing prejudice]; *In re Moore* (1975) 45 Cal.App.3d 285, 294.) Because he admitted the violations and has served the custodial sanction “there is nothing for us to remedy, even if we were disposed to do so.” (*Spencer v. Kemna* (1998) 523 U.S. 1, 18.)<sup>4</sup>

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

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<sup>4</sup> For the same reasons, we do not address Tarallo’s arguments regarding the effect of Proposition 9, the Victims’ Bill of Rights Act of 2008: Marsy’s Law.

Donald D. Coleman, Judge

Superior Court County of Ventura

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Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

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